

UNITED STATES OFFICE OF
GOVERNMENT ETHICS

November 5, 2018

VIA ELECTRONIC MAIL ONLY

Austin R. Evers

foia@americanoversight.org

Tracking No: OGE FOIA FY 19/007

Dear Mr. Evers:

This is in reference to your Freedom of Information Act (FOIA) request, which was referred to the U.S. Office of Government Ethics (OGE) by the Department of Justice on October 24, 2018. The Department of Justice tracking number is DOJ-2018-008711. Your original request to the Department of Justice sought various records relating to Assistant Attorney General Brian Benczkowski. The Department of Justice referred three pages of responsive records to OGE and requested that OGE respond directly to you.

OGE is granting your FOIA request. The referred pages are the Certification of Ethics Agreement Compliance for Mr. Benczkowski dated October 9, 2018. This document is available online at

[https://extapps2.oge.gov/201/Presiden.nsf/DC9933F7C45D103B85258328002C2111/\\$FILE/Benczkowski%20EA%20Certification%201%20of%201.pdf](https://extapps2.oge.gov/201/Presiden.nsf/DC9933F7C45D103B85258328002C2111/$FILE/Benczkowski%20EA%20Certification%201%20of%201.pdf).

I trust that this information fully satisfies your request. If you need any further assistance or would like to discuss any aspect of your request, please do not hesitate to contact me at 202-482-9267. As OGE's FOIA Public Liaison, I am available for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

The OGE official responsible for this FOIA determination is the undersigned. If you consider this response to be a denial of your request, you may administratively appeal this determination in accordance with the FOIA, as codified at 5 U.S.C. § 552(a)(6)(A), and OGE's updated FOIA regulations, at 5 C.F.R. § 2604.304, to the Program Counsel, U.S. Office of Government Ethics, 1201 New York Avenue, N.W., Suite 500, Washington, DC 20005-3917. Any such appeal must be in writing and must be sent within 90 days of the date you receive this response letter. If you do appeal, you should include copies of your request and this response, together with a statement of why you believe this initial determination is in error. Also, if you appeal, you should clearly indicate on the envelope and in the letter that it is a "Freedom of Information Act Appeal."

Sincerely,

Rachel K. Dowell
OGE FOIA Officer

CERTIFICATION OF ETHICS AGREEMENT COMPLIANCE

Senate Confirmed Presidential Appointee

1. Appointee's Information	a. Appointee's Name:	to be completed by OGE Brian Benczkowski
	b. Position Title:	to be completed by OGE Assistant Attorney General, Criminal Division
	c. Agency:	to be completed by OGE Department of Justice
	d. Date Ethics Agreement Signed:	to be completed by OGE February 26, 2018
	e. Date Confirmed:	to be completed by OGE July 11, 2018
	f. Due Date for Certification of Ethics Agreement Compliance:	to be completed by OGE October 16, 2018
2. Resignations	<i>I completed all of the resignations indicated in my ethics agreement before I assumed the duties of my current government position.</i>	<input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
3. Divestitures	a. <i>I have completed all of the divestitures indicated in my ethics agreement. I also understand that I may not repurchase these assets during my appointment without OGE's prior approval.</i>	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A
	b. <i>I have filed a period transaction report, or periodic transaction reports, (OGE Form 278-T) to disclose the completion of these agreed upon divestitures.</i>	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A
Filing Date(s) of OGE Form 278-T Report(s):		
4. Managed Accounts	<i>If I have a managed account or use the services of an investment professional, I have notified the manager or professional of the limitations indicated in my ethics agreement. In addition, I am continuing to monitor purchases.</i>	<input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
5. Interim Recusals	<i>I complied with my interim recusal obligations pending the divestitures required by my ethics agreement.</i>	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A

THIS CERTIFICATION WILL BE POSTED FOR PUBLIC VIEWING ON OGE'S WEBSITE. 1

<p>6. Recusals <i>(Note: These factual statements describe the appointee's current status. They are not intended to modify ethics agreement commitments or create new recusal obligations.)</i></p>	<p>a. <i>I am recusing from particular matters in which I know I have a <u>personal</u> or <u>imputed</u> financial interest directly and predictably affected by the matter, unless I have received a waiver or qualify for a regulatory exemption.</i></p> <p><input checked="" type="radio"/> Yes <input type="radio"/> No</p> <p>b. <i>I am recusing from particular matters in which any former employer or client I served in the past year is a party or represents a party, unless I have been authorized under 5 C.F.R. § 2635.502(d).</i></p> <p><input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A</p> <p>c. <i>I am recusing from particular matters in which any former employer or client I served in the two years prior to my appointment is a party or represents a party, unless I have received a waiver under Exec. Order 13770.</i></p> <p><input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A</p>
<p>7. Waivers and Authorizations</p>	<p>a. <i>I received a waiver pursuant to 18 U.S.C. § 208.</i></p> <p>If yes, indicate the date of the waiver and indicate the financial interest covered by the waiver.</p> <p><input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>Date: Financial interest:</p>
	<p>b. <i>I received a waiver pursuant to Executive Order 13770.</i></p> <p>If yes, indicate the date of the waiver and the subject of the waiver (i.e., applicable paragraph of the ethics pledge, parties, particular matters, specific issue areas, as applicable).</p> <p><input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>Date: Subject:</p>
	<p>c. <i>I received an authorization pursuant to 5 C.F.R. § 2635.502(d).</i></p> <p>If yes, indicate date of authorization and identify the covered person(s) as to whom you have been authorized (e.g., former employer, former client, spouse's employer, spouse's current client, etc.).</p> <p><input checked="" type="radio"/> Yes <input type="radio"/> No</p> <p>Date: 8/21/18 Covered person(s): former client</p>
	<p>d. <i>I received a waiver pursuant to 5 C.F.R. § 2635.503(c).</i></p> <p>If yes, indicate the date of the waiver and identify the former employer or payer.</p> <p><input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>Date: Former employer or payer:</p>

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<p>8. Payments, Accelerations, or Divestitures Required to be Completed Prior to Entering Government Service</p>	<p>Mark this box if not applicable:</p> <p><input checked="" type="checkbox"/></p>	<p>a. If I committed that I would forfeit a financial interest or payment, unless it was received or accelerated prior to my assumption of the duties of the government position:</p>	<p><input type="radio"/> I received it (or it was accelerated) <u>prior to</u> my assumption of the duties of the position. <input type="radio"/> I received it (or it was accelerated) <u>after</u> my assumption of the duties of the position. <input type="radio"/> I forfeited it.</p>
<p>9. Requirements for Regular Appointees</p>		<p><i>I have completed my initial ethics briefing, pursuant to 5 C.F.R. § 2638.305.</i> If you are a Special Government Employee (SGE) or career Foreign Service Officer (FSO), select N/A.</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A</p>
<p>10. Additional Ethics Agreement Requirements</p>		<p>to be completed by OGE</p>	<p>to be completed by appointee <i>I am complying with these requirements as described in the adjacent box.</i></p> <p><input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A</p>
<p>11. Comments of Appointee</p>			
<p>Any intentionally false or misleading statement or response provided in this certification is a violation of law punishable by a fine or imprisonment, or both, under 18 U.S.C. § 1001.</p>			
<p><i>I certify that the information I have provided is complete and accurate.</i></p>	<p>Appointee's Signature:</p> <p></p>		<p>Date:</p> <p><i>Oct. 9, 2018</i></p>

THIS CERTIFICATION WILL BE POSTED FOR PUBLIC VIEWING ON OGE'S WEBSITE. 3



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

October 25, 2018

Mr. Austin Evers
American Oversight
1030 15th Street NW, Suite B255
foia@americanoversight.org

Re: DOJ-2018-008711 (AG)
DOJ-2018-008799 (DAG)
VRB:VAV:ERH

Dear Mr. Evers:

This responds to your Freedom of Information Act (FOIA) request dated and received in this Office on September 28, 2018 for records reflecting 1) any recusal or disqualification of Assistant Attorney General Brian Benczkowski, 2) conflicts of interest or ethics waivers or authorizations issued for Mr. Benczkowski, 3) determinations regarding ethics matters surrounding Mr. Benczkowski's participation in the Office of Special Counsel's investigation 4) communications between the Department and the Office of Government Ethics regarding Mr. Benczkowski, 5) communications between Mr. Benczkowski and the Department Ethics Office, 6) communications between Mr. Benczkowski and Robin Gold, and 7) a copy of the ethics pledge signed by Mr. Benczkowski. This response is made on behalf of the Offices of the Attorney General (OAG) and Deputy Attorney General (ODAG).

Pursuant to a telephone conversation and email exchange dated October 23, 2018 between Eric Hotchkiss of this Office and Dan McGrath of your Office, we agreed that parts 1-4 of your request would be satisfied on behalf of the OAG and ODAG via a search of the electronic database of the Departmental Executive Secretariat. We also agreed that an email search of OAG and ODAG was not warranted. Your request has been processed accordingly.

Regarding parts 1-4 of your request, please be advised that a search has been conducted of the electronic database of the Departmental Executive Secretariat, which is the official records repository for the Offices of the Attorney General and Deputy Attorney General, and nineteen pages were located that are responsive to your request. I have determined that fourteen pages are appropriate for release with out excision and copies are enclosed.

Because five pages originated with the US Office of Government Ethics (OGE) and the Department's Justice Management Division (JMD), we have referred that material to those Offices for processing and direct response to you. Specifically three pages were referred to OGE, and two pages were referred to JMD. Contact information for OGE and JMD is as follows:

Rachel Dowell
OGE FOIA Officer
1201 New York Avenue, NW
Suite 500
Washington DC, 20005-3917

Karen McFadden
FOIA Contact
Room 1111 RFK
950 Pennsylvania Ave, NW
Washington, DC 20530-0001

Telephone: 202-482-9267
Email: usoge@oge.gov

Telephone: 202-514-3101
Email: JMDFOIA@usdoj.gov

With regard to parts 5-7 of your request, we note that you have also submitted your request to the Department's Criminal Division (CRM), Justice Management Division (JMD), and the Office of Legal Counsel. These Offices, specifically CRM and JMD, are likely to maintain the records you seek to the extent that they exist. Accordingly, your request for records in OAG and ODAG has been satisfied and the two request tracking numbers associated with those Offices (DOJ-2018-008711 (AG) and DOJ-2018-008799 (DAG)) have been closed.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552 (2012 & Supp. V 2017). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison, Douglas Hibbard, for any further assistance and to discuss any aspect of your request at: Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001; telephone at 202-514-3642; or facsimile at 202-514-1009.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal at <https://foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



Vanessa R. Brinkmann
Senior Counsel

Enclosures

United States Senate

Washington, DC 20510-1304

September 12, 2017

The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Deputy Attorney General Rosenstein:

Thank you for your phone call on September 11, 2017 regarding the nomination of Brian Benczkowski to be the Assistant Attorney General for the Justice Department's Criminal Division.

As I discussed with you on the phone, I am deeply troubled by Mr. Benczkowski's decision to represent Alfa Bank in March 2017 after he had managed the Trump Justice Department Landing Team and after he had expressed an interest in serving in the Justice Department in the Trump Administration. For weeks, I have been seeking answers to two critical questions so that the Committee can fairly assess Mr. Benczkowski's representation of Alfa Bank. First, is Alfa Bank currently, or has Alfa Bank ever been, the subject of a federal criminal investigation? And second, what is the Intelligence Community's assessment of the reported computer server contacts between Alfa Bank and the Trump Organization during the 2016 campaign?

So far, I have not received answers to either of these questions, nor have I received any credible explanation why the Administration refuses to provide this information. This is unacceptable. Before the Senate Judiciary Committee votes on whether to confirm Alfa Bank's lawyer to serve in one of the top positions in the Justice Department, the Committee must be provided with sufficient information to understand the nature and implications of Alfa Bank's activities.

I understand it was your personal decision not to permit officials from the Justice Department or Federal Bureau of Investigation to participate in last week's classified briefing on Alfa Bank that I requested for Judiciary Committee members. Therefore I request that you provide answers to these two questions:

1. Is Alfa Bank currently, or has Alfa Bank ever been, the subject of a federal criminal investigation?
2. What is the Intelligence Community's assessment of the reported computer server contacts between Alfa Bank and the Trump Organization during the 2016 campaign?

Please respond by September 19. Thank you for your attention to this important matter.

Sincerely,

Richard J. Durbin
United States Senator



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 25, 2017

The Honorable Richard J. Durbin
United States Senate
Washington, DC 20510

Dear Senator Durbin:

This responds to your letter of September 12, 2017, regarding the nomination of Brian Benczkowski to be the Assistant Attorney General for the Criminal Division at the Department of Justice (Department).

Your letter correctly notes, as Mr. Benczkowski has acknowledged, that he previously represented Alfa Bank. The ethics rules, the professional responsibility rules, and the Trump Ethics Pledge each prevent Mr. Benczkowski's participation in any investigation that may exist pertaining to Alfa Bank.

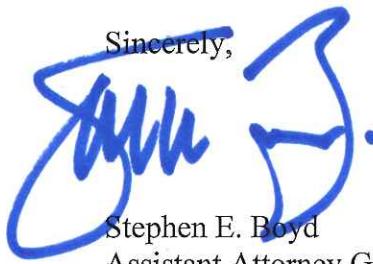
First, once confirmed, Mr. Benczkowski will have a covered relationship with Alfa Bank as defined in 28 C.F.R. § 2635.502. Under this regulation, for one year from the date of employment, any federal employee is prohibited from participating personally and substantially in any matter in which a person with whom he has a covered relationship is a party. Furthermore, in the case of a Department attorney who previously represented a client in a matter adverse to the Department, this regulation, along with Rules of Professional Conduct pertaining to conflicts, would preclude the employee's participation in the same matter for the duration of the matter. Finally, Executive Order 13770 issued by President Trump extends to two years the period during which a federal employee has a covered relationship with a former client. In other words, Mr. Benczkowski will be recused from any investigation in which he represented Alfa Bank for the duration of the matter, and in any other matter in which Alfa Bank is a party for at least two years.

Because of the Department's longstanding policy of declining to confirm or deny the existence of ongoing investigations and because of the inescapable recusal of Mr. Benczkowski from any investigation of Alfa Bank, the Department respectfully must decline to confirm or deny the existence of any such investigation. Additionally, it would be inappropriate to provide any Intelligence Community assessment of Alfa Bank, if such an assessment exists. Mr. Benczkowski's limited representation of Alfa Bank provides insufficient predicate for releasing otherwise non-public information about third parties.

The Honorable Richard J. Durbin
Page Two

Mr. Benczkowski is well qualified to serve as Assistant Attorney General for the Criminal Division, and we hope you will be able to support his confirmation. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Stephen E. Boyd
Assistant Attorney General

SHELDON WHITEHOUSE
RHODE ISLAND

COMMITTEES:
AGING
BUDGET
ENVIRONMENT AND PUBLIC WORKS
HEALTH, EDUCATION, LABOR, AND PENSIONS
JUDICIARY

<http://whitehouse.senate.gov>

(202) 224-2921
TTY (202) 224-7746

170 WESTMINSTER STREET, SUITE 200
PROVIDENCE, RI 02903
(401) 453-5294

United States Senate

WASHINGTON, DC 20510-3905

October 10, 2017

The Honorable Rod Rosenstein
Deputy Attorney General
Department of Justice
950 Pennsylvania Ave, NW
Washington, D.C. 20530

Dear Mr. Rosenstein:

I write to follow up on letters Senator Graham and I sent on May 26 and July 27 seeking specific information about the structure the Department of Justice has put in place to enable Special Counsel Mueller to oversee the investigation into Russian interference and related matters. When you briefed the full Senate on May 18, following the termination of former FBI Director Comey and Special Counsel Mueller's appointment, you committed to provide us with this information in writing. Four months later, we still do not have meaningful answers.

On September 27, during a courtesy meeting with National Security Division nominee John Demers, a representative from the Office of Legislative Affairs hand-delivered a letter dated that same day purporting to respond to the previous inquiries. The letter states that the Special Counsel "communicates directly with relevant Department components in the exercise of its responsibilities," but provides no details whatsoever with respect to the terms and conditions, if any, governing such communications.

Especially in light of the nomination of Brian Benczkowski for Assistant Attorney General for the Criminal Division, the Senate Judiciary Committee is entitled to these details. Given the nominee's political relationship with the recused Attorney General, his position on the Trump Transition Team, and his representation of Alfa Bank, Committee members deserve an explanation as to how he will fit into the overall investigative structure and what process the Department intends to use to make recusal determinations. I respectfully request an answer to these questions, as well as to the questions posed in my previous two letters, by no later than October 18, 2017.

Sincerely,



Sheldon Whitehouse
United States Senator



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 11 2017

The Honorable Sheldon Whitehouse
United States Senate
Washington, DC 20510

Dear Senator Whitehouse:

This responds to your letter to the Deputy Attorney General dated October 10, 2017, in which you asked for additional detail regarding the structure the Department of Justice (Department) has put in place to enable Special Counsel Robert S. Mueller III to oversee investigations into Russian interference with the 2016 Presidential election.

As we previously noted, the Department is strictly adhering to the Special Counsel regulations. Those regulations state that the Special Counsel “shall comply with the rules, regulations, procedures, practices and policies of the Department of Justice.” 28 C.F.R. § 600.7(a). They also require him to “consult with the appropriate offices within the Department for guidance with respect to these issues.” *Id.* The Department generally has not put in place a separate structure for the Special Counsel’s Office (SCO) to comply with these obligations or to consult with subject-matter experts within the Department.

As a general rule, if a statute, regulation, or policy (e.g., the United States Attorneys’ Manual) requires approval of a particular action, the SCO directly contacts the officials who would be involved in the approval process in the normal course. Generally, the initial contacts occur between SCO and the career officials in the relevant component who are responsible for approving the action or for making recommendations to the Department official with ultimate approval authority. In order to manage its limited resources and to ensure that information about the investigation is not disseminated more broadly than necessary, the Criminal Division has identified specific points of contact for the SCO with respect to various subject matters. Officials who are involved in any approval request will be asked to evaluate a request for approval from the SCO as they would any request—i.e., to evaluate the request as if it were coming from a United States Attorney’s Office or Department component. As you know, the Attorney General is recused from the investigation; therefore, when the applicable statute, regulation, or policy requires approval of the Attorney General, the Deputy Attorney General as Acting Attorney General would consider the request for approval.

If a responsible Department official subordinate to the Acting Attorney General were to disapprove of a proposed action or if the Special Counsel determines that extraordinary circumstances would render compliance with the otherwise required review and approval

procedures inappropriate, the Special Counsel may consult directly with the Acting Attorney General. 28 C.F.R. § 600.7(a). In considering whether to approve the proposed action, the Acting Attorney General would give great weight to the views of the Special Counsel, and would disapprove of the action only when the action is so inappropriate or unwarranted under established Departmental practices that it should not be pursued. 28 C.F.R. § 600.7(b). Any such decisions by the Acting Attorney General must be reported to the Chairman and Ranking Member of the Judiciary Committees of each House of Congress at the conclusion of the investigation. 28 C.F.R. § 600.9(a)(3).

The SCO communicates regularly with the Office of the Deputy Attorney General (ODAG) in order generally to provide updates on the progress of the investigation or to identify resource needs. Those communications occur between the SCO and designated senior officials within ODAG.

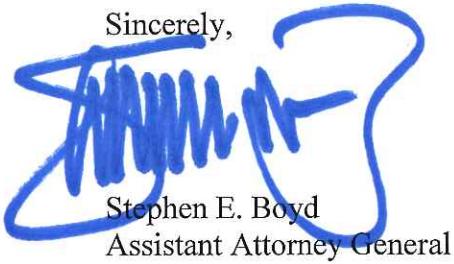
Your earlier letters asked about communications with the White House. Those interactions take place, if at all, consistent with the May 11, 2009 Department Memorandum on Communications with the White House and Congress. That policy provides, among other things, that “the Justice Department will advise the White House concerning pending or contemplated criminal or civil investigations or cases when—but only when—it is important for the performance of the President’s duties and appropriate from a law enforcement perspective.” The policy provides that only members of a leadership office, in this case the Office of the Deputy Attorney General, can engage in such communications. The policy does not preclude “meetings or communications necessary to the proper conduct of an investigation.” Department investigators and prosecutors typically engage in such communications directly.

Your letter references the nomination of Brian Benczkowski to be Assistant Attorney General (AAG) for the Criminal Division. The AAG has no supervisory role with respect to the Special Counsel. As described above, however, it is possible that the SCO will seek approvals from the Criminal Division as required by statute, regulation, or policy, or may simply want to consult with subject-matter experts in the Criminal Division as appropriate in the normal course of Department investigations. If Mr. Benczkowski is confirmed as AAG, the Department will require his consultation with appropriate ethics experts within the Department prior to his participation in or supervision of the SCO’s interaction with the Criminal Division. Such consultation with ethics experts is required of any and all members of leadership joining the Department with respect to matters in which they may have a conflict of interest under Rules of Professional Conduct or government ethics regulations. Mr. Benczkowski will be authorized to participate only if the Department determines that his participation is consistent with applicable ethics rules and regulations.

The Honorable Sheldon Whitehouse
Page Three

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "STEPHEN E. BOYD". The signature is enclosed within a blue oval.

Stephen E. Boyd
Assistant Attorney General

United States Senate
WASHINGTON, DC 20510

July 24, 2018

The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

The Honorable Lee J. Lofthus
Assistant Attorney General for Administration
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Deputy Attorney General Rosenstein and Assistant Attorney General Lofthus:

On Wednesday, July 11, 2018, the Senate confirmed Brian Benczkowski to be Assistant Attorney General (AAG) of the Criminal Division of the Department of Justice (“Department”). Today, we write for further information concerning Mr. Benczkowski’s ethics agreement with the Department, the scope of his recusals, any waivers he has been granted, and any other information relevant to the Department’s review of Mr. Benczkowski’s prior work at it relates to his compliance with the Ethics in Government Act, associated regulations, Department policy, and the Trump Ethics Pledge, Executive Order 13770.

The context of Mr. Benczkowski’s selection to lead the Criminal Division raises concerns that must be addressed in your review. With no prosecutorial experience and barely any time in a courtroom of any sort, Mr. Benczkowski appears to have been nominated at least in part as a result of his prior, political relationship with Attorney General Sessions. With the Attorney General recused from the Department’s Russia investigation, President Trump repeatedly violating rules and norms designed to protect the independence of that investigation, and House Republicans engaged in an active campaign to discredit the Department and FBI and make confidential investigative materials public, the Department and its ethics officials should take the utmost precautions to prevent any backchannel, unauthorized disclosures of the Special Counsel’s work.

The issues with Mr. Benczkowski extend to his experience, as well as his lack of experience. During the course of his confirmation proceedings, it came to light that as a lawyer in private practice, Mr. Benczkowski recently represented the Russian Alfa Bank in connection with allegations that its servers had maintained a clandestine back channel to the Trump Organization. Mr. Benczkowski’s representation of Alfa Bank also included a review of the so-called “Steele dossier,” the private intelligence report by Christopher Steele that bears on issues central to the ongoing Special Counsel investigation into Russian election interference and related matters.

Before his confirmation, Mr. Benczkowski committed to recuse himself, if confirmed as AAG, from all matters related to Alfa Bank.¹ He did not, however, commit to recuse himself from all matters related to the Alfa Group Consortium, the parent company of Alfa Bank, or individuals related to that entity. He also did not commit to recuse himself from the Special Counsel’s investigation into Russian election interference. Three individuals with ownership interests in Alfa Group Consortium—Mikhail Fridman, Pyotr Aven, and German Khan—have been identified to Congress by the United States Department of Treasury as among “senior foreign officials and oligarchs in the Russian Federation, as determined by their closeness to the Russian regime and their net worth.”² A son-in-law of Mr. Khan, Alex Van der Zwaan, pleaded guilty to lying to federal investigators.³

With respect to those matters, Mr. Benczkowski told the Senate Judiciary Committee:

Because I do not know the scope of [the Department’s investigation into Russian interference with the 2016 election or Special Counsel Mueller’s investigation], I cannot commit to such a recusal at this time. If I am confirmed and a matter comes before me in the Criminal Division where I believe recusal might be warranted, I will review the facts, consult with career ethics officials at the Department, and make a decision as warranted by the law and the facts.⁴

In prior correspondence with the Senate, the Department has confirmed that the Special Counsel’s Office (SCO) may need to “seek approvals from the Criminal Division as required by statute, regulation, or policy[.]”⁵ The Department has also committed that “if Mr. Benczkowski is confirmed as AAG, the Department will require his consultation with appropriate ethics experts within the Department prior to his participation in or supervision of the SCO’s interaction with the Criminal Division.”⁶

The significance of these determinations was underscored by two steps taken by the Department just last week. For example, without recusal, there is a risk that Mr. Benczkowski would have oversight of investigative steps such as the Special Counsel’s recent request for use immunity for five witnesses in the SCO’s prosecution of Paul Manafort. Likewise, last Tuesday, the Department indicted a Russian national, Mariia Butina, for acting and conspiring to act as an agent of a foreign government. The indictment was handed down by a grand jury in the United States District Court for the District of Columbia and signed by the District’s United States

¹ See Response from Brian Benczkowski to Question for the Record #2 from Senator Sheldon Whitehouse, August 1, 2017 (“I have decided to recuse myself from any matter involving Alfa Bank for the duration of my service as the Assistant Attorney General for the Criminal Division, if I am confirmed.”).

² Report to Congress Pursuant to Section 241 of the Countering America’s Adversaries Through Sanctions Act of 2017 Regarding Senior Foreign Political Figures and Oligarchs in the Russian Federation and Russian Parastatal Entities, January 29, 2018.

³ The Special Counsel referenced Mr. Khan in his sentencing memorandum for Mr. Van der Zwaan: “Van der Zwaan is a person of ample financial means—both personally and through his father-in-law, a prominent Russian oligarch, who has paid substantial sums to the defendant and his wife. He can pay any fine imposed.” Government’s Sentencing Memorandum, Crim. No. 18-31 (D.D.C) filed Mar. 27, 2018.

⁴ Response from Brian Benczkowski to Question for the Record #3 from Senator Sheldon Whitehouse, August 1, 2017.

⁵ Letter from Hon. Stephen Boyd to Senator Sheldon Whitehouse, Dec. 11, 2017.

⁶ *Id.*

Attorney, Jessie Liu. Mr. Benczkowski's involvement in these actions could, at a minimum, create the appearance of a conflict or undue influence over these decisions.

Given Mr. Benczkowski's prior relationship with the Attorney General and his representation of Alfa Bank—particularly in connection to the Steele Dossier—we believe Mr. Benczkowski should be recused from all aspects of the Special Counsel investigation, as well as from all matters related to the Alfa Group Consortium and its principals. A categorical recusal is the only way for the Department to ensure public confidence in those and any associated investigations. To further understand the Department's position and decisions related to Mr. Benczkowski's conflicts of interest, we request that you provide the following documentation and, as applicable, address the following questions:

- All ethics agreements, recusals, waivers, or other documentation pertaining to the scope of Mr. Benczkowski's duties at the Department.
- All counseling notes, emails, and any other communication between Mr. Benczkowski, the Department's Ethics Office, and the Office of Government Ethics.
- A copy of Mr. Benczkowski's signed "Ethics Pledge."
- If Mr. Benczkowski has not been recused from all matters related to the Alfa Group Consortium, please explain why.
- If Mr. Benczkowski has not been recused from all matters related to Mikhail Fridman, Pyotr Aven, and/or German Khan, please explain why.
- What was Mr. Benczkowski's involvement, if any, in the Department's request for use immunity for five witnesses in the SCO's prosecution of Paul Manafort, and in the Department's decision to charge Mariia Butina?
- If Mr. Benczkowski has not been recused from all matters related to the Special Counsel's investigation into Russian interference in the 2016 election, or related investigations and prosecutions conducted by the Department or United States Attorneys' offices, please explain why.

In Mr. Lofthus's February 26, 2018, letter to Office of Government Ethics Acting Director David Apol, he stated that Mr. Benczkowski would meet with ethics officials during his first week of service and complete document compliance with his ethics agreement within 90 days of service. The critical importance and pendency of matters before the Department demand assurances that Mr. Benczkowski will have no role, consultative or otherwise, in them until his ethics arrangements are complete. Accordingly, we request a response to this letter no later than July 31, 2018.

Sincerely,



Sheldon Whitehouse
United States Senator



Richard J. Durbin
United States Senator

Dianne Feinstein
Dianne Feinstein
United States Senator

Mark R Warner
Mark R. Warner
United States Senator

Patrick Leahy
Patrick Leahy
United States Senator

Ron Wyden
Ron Wyden
United States Senator

Jack Reed
Jack Reed
United States Senator

Amy Klobuchar
Amy Klobuchar
United States Senator

Christopher A. Coons
Christopher A. Coons
United States Senator

Richard Blumenthal
Richard Blumenthal
United States Senator

Mazie K. Hirono
Mazie K. Hirono
United States Senator

Martin Heinrich
Martin Heinrich
United States Senator

Cory A. Booker
Cory A. Booker
United States Senator

Kamala D. Harris
Kamala D. Harris
United States Senator



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 18 2018

The Honorable Sheldon Whitehouse
United States Senate
Washington, DC 20510

Dear Senator Whitehouse:

This responds to your letter to the Deputy Attorney General and the Assistant Attorney General for Administration dated July 24, 2018, regarding the Assistant Attorney General for the Criminal Division's (Assistant Attorney General) ethics pledge and recusals. We are sending identical responses to the other Senators who joined your letter.

As you mentioned, the Department of Justice (Department) has provided the Acting Director and General Counsel of the Office of Government Ethics with the financial disclosure report of the Assistant Attorney General in a letter dated February 26, 2018. A copy of this letter is enclosed. Furthermore, as was committed in the letter, the Assistant Attorney General has met with ethics officials and completed the initial ethics briefing as required under 5 C.F.R. § 2638.305. He has also documented his compliance in a Certification of Ethics Agreement Compliance, which is enclosed.

The Assistant Attorney General is screened and recused from matters in which he has a financial interest or a personal business relationship. This screening process is consistent with longstanding policies and procedures of the Department and follows the specific recusal procedures of the Criminal Division. Such matters are governed by the standards set forth in the financial conflict of interest statute (18 U.S.C. § 208), the impartiality standard of conduct (5 C.F.R. § 2635.502), and the Ethics Pledge under Executive Order 13770. A copy of the Assistant Attorney General's signed ethics pledge is enclosed.

Pursuant to these standards, the Assistant Attorney General is specifically screened and recused from matters involving his financial interests, former law firm, all clients for whom he did work for during the two years prior to his appointment, including matters related to his spouse's lobbying firm, and his spouse's clients. Furthermore, Department regulation (28 C.F.R. Part 45.2) may require recusal for a Department official participating in a criminal investigation or prosecution where the employee has a "personal" or "political" relationship with any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution, or any person or organization which he or she knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution. The

Assistant Attorney General confers with the career Deputy Designated Agency Ethics Official for the Criminal Division (DDAEO) to ensure compliance with this regulation.

Pursuant to Department procedure, the Assistant Attorney General will not participate in any matter that he has been recused from, unless and until the DDAEO seeks a waiver or written authorization from the Office of the Deputy Attorney General to permit the Assistant Attorney General's participation. A waiver or written authorization may be sought if it is determined that the Assistant Attorney General's participation in the matter is critical and that his recusal would materially impair the ability of the Criminal Division to carry out its mission.

To ensure compliance with the previously referenced statutes and standards, career ethics officials make all recusal and screening determinations based on the specific facts and circumstances surrounding each matter. Whether a matter raises a conflict or appearance of concern is specific to that particular matter and the Assistant Attorney General's prior or current connection to the matter. Ethics officials cannot and do not issue hypothetical determinations when considering waivers or recusals, and Department ethics officials only provide advice in response to a specific matter.

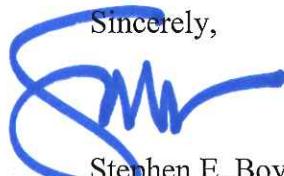
In addition to being governed by these generally applicable rules and regulations, the Assistant Attorney General has requested to be—and is currently—screened off from any matters regarding Special Counsel Robert Mueller's investigation, including any prosecutions arising from the investigation. This screening will remain in effect unless and until the Deputy Attorney General determines that the participation of the Assistant Attorney General in a Special Counsel-related matter is required and career ethics officials at the Department determine that his participation in such a matter would be consistent with the applicable rules of professional conduct, as well as with government ethics regulations.

Your letter also requests counseling notes and other communications that the Assistant Attorney General may have had with the Department's ethics officials. It is the longstanding policy of the Department not to discuss non-public information related to such matters in order to protect the confidentiality interests associated with internal deliberations, including seeking ethics advice. To disclose any ethics communications would have a chilling effect on Department employees' willingness to speak openly and candidly with ethics officials on ethics matters.

The Honorable Sheldon Whitehouse
Page Three

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Stephen E. Boyd
Assistant Attorney General

Enclosures

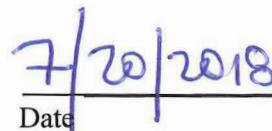
ETHICS PLEDGE

As a condition, and in consideration, of my employment in the United States Government in an appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. I will not, within 5 years after the termination of my employment as an appointee in any executive agency in which I am appointed to serve, engage in lobbying activities with respect to that agency.
2. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions.
3. In addition to abiding by the limitations of paragraphs 1 and 2, I also agree, upon leaving Government service, not to engage in lobbying activities with respect to any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration.
4. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2017, would require me to register under the Foreign Agents Registration Act of 1938, as amended.
5. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.
6. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.
7. If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.
8. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.
9. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 28, 2017, which I have read before signing this document, defines certain terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the obligations of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Government service.


Signature


Print or type your full name (last, first, middle)


Date